

EXHIBIT

12

Pages 1-28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ALSUP

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. CV-11-00162 WHA
)
SAMSUNG SDI CO. LTD.,)
)
Defendants.) SAN FRANCISCO, CA
) TUESDAY, MAY 17, 2011
) 3:20 p.m.
)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff:

UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
SAN FRANCISCO FIELD OFFICE
450 Golden Gate Avenue - Rm. 10-0101
San Francisco, CA 94102
BY: MAY LEE HEYE, ESQ.

For Defendants:

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
Four Embarcadero Center- 4th Floor
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(415) 434-9100
BY: GARY L. HALLING, ESQ.
and **JAMES L. MCGINNIS, ESQ.**

REPORTED BY: MARGARET "MARGO" GURULE, CCR
Pro Tem Court Reporter - USDC

1 **May 17, 2011**

3:20 p.m.

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3 **P R O C E E D I N G S**

4 **THE COURT:** Welcome. Please be seated.

5 Just to report the good news that Ed Chen has just been
6 sworn in as the new U.S. District Judge. I was down -- I had
7 the honor to attend that little ceremony.

8 So we're now ready to go. Let's call the next case.

9 **THE CLERK:** Calling Criminal 11-00162, United States vs.
10 Samsung SDI Corporation.

11 **MR. HALLING:** Good afternoon, Your Honor. Gary Halling
12 and Jim McGinnis for Samsung SDI.

13 Also here is our official corporate representative,
14 Mr. Sang Soo Noh. And with him is Mr. Stephen Bong-Han Kim of
15 the Samsung SDI Legal Department.

16 **THE COURT:** Okay. Welcome to all of you.

17 **MS. HEYE:** May Lee Heye for the United States.

18 **THE COURT:** All right. Welcome to you.

19 **MS. HEYE:** Thank you.

20 **THE COURT:** So what is our plan for the case?

21 **MR. HALLING:** Well, Your Honor, we have submitted an
22 amended plea agreement, and we are prepared to enter a plea
23 today.

24 **THE COURT:** All right. So we will take the plea, send it
25 out for the presentence report, come back for a sentencing

1 hearing in about 90 days.

2 That's what you want to do?

3 **MR. HALLING:** That's correct, Your Honor.

4 **THE COURT:** All right. Good. So are there any -- let's
5 just go over what the proposed deal is. So Ms. May Lee Heye,
6 right?

7 **MS. HEYE:** Yes, Your Honor.

8 **THE COURT:** All right. Tell me what the deal is here so I
9 can have that in mind as we go through this.

10 **MS. HEYE:** Sure, Your Honor.

11 Samsung SDI's plea agreement is being entered pursuant to
12 Rule 11(c)(1)(C).

13 Samsung SDI agrees to plead guilty to a one count
14 information charging a violation of 15 U.S.C. Section 1 for
15 fixing prices, reducing output, and allocating market shares.
16 It will pay a criminal fine of \$32 million.

17 Would you like me to go through the cooperation
18 provisions?

19 **THE COURT:** Well, there were some things about who you
20 would not prosecute and so forth. So tell me what that is.

21 **MS. HEYE:** Certainly, Your Honor. On page 8 in paragraph
22 12b. there are certain individuals that have been identified in
23 the plea agreement. There are four individuals. Those
24 individuals are carved out of the plea agreement.

25 However, the United States has agreed that it will not

1 file further criminal charges against Samsung SDI or its
2 related entities or current or former employees, excluding the
3 individuals I just referred to for their participation in any
4 conspiracy involving CDTs or CPTs prior to the date of the plea
5 agreement.

6 We have also agreed not to seek restitution pending the
7 civil cases related to this matter, and we have also agreed to
8 recommend that Samsung SDI be given no term of probation.

9 **THE COURT:** That they be given what? That they be given a
10 term of probation?

11 **MS. HEYE:** That they be given no term of probation, Your
12 Honor.

13 **THE COURT:** Well, I mean, we can't put a corporation in
14 jail, so what else is there other than paying a fine?

15 **MS. HEYE:** They pay the fine and the special assessment,
16 Your Honor.

17 **THE COURT:** All right. And these individuals that you
18 have carved out --

19 **MS. HEYE:** Yes, Your Honor.

20 **THE COURT:** -- what will become of them? What is their
21 status going to be?

22 **MS. HEYE:** Their status has not yet been determined, but
23 the government is continuing its investigation. We will handle
24 them individually. They will not be covered by the protections
25 of the plea agreement.

1 **THE COURT:** The maximum fine is how much under the
2 statutes?

3 **MS. HEYE:** I'm sorry?

4 **THE COURT:** The maximum fine is \$100 million, right?

5 **MS. HEYE:** Yes, Your Honor.

6 **THE COURT:** So \$32 million versus \$100 million. Okay. So
7 if the Court were to decide that \$32.5 million is the right
8 fine, then would the defendant have the right to withdraw from
9 the plea agreement?

10 **MS. HEYE:** Yes, they would, Your Honor. This is a (C)
11 deal.

12 **THE COURT:** So I don't know the answer to that. I haven't
13 got a clue what the right answer here is.

14 Tell me the part about restitution.

15 **MS. HEYE:** Your Honor, we -- the United States has agreed
16 not to seek restitution. As you know, there are pending civil
17 cases before Judge Conti, and we have agreed that that is part
18 of the recommended sentence.

19 So as Your Honor has indicated, you would like to accept
20 the guilty plea, get a presentence report, educate yourself on
21 the issues. And at that point, you, I think, indicated that
22 you would give the parties an opportunity to address any other
23 concerns that you had.

24 If you felt that no restitution was appropriate, then
25 obviously we would proceed. If you did not accept that, then

1 we would not have a deal.

2 **THE COURT:** All right. Well, does this agreement call for
3 anybody to give speeches?

4 **MS. HEYE:** It does not, Your Honor.

5 **THE COURT:** Why wouldn't that be a good idea?

6 **MS. HEYE:** Since it's a deal with a corporation, it's just
7 not something we had discussed.

8 **THE COURT:** The corporation could call some of its
9 top-ranking people to go speak to groups and say, "Here's how I
10 almost went to prison."

11 **MS. HEYE:** I guess that is certainly something that we
12 could do. It is not something we negotiated in this instance.

13 **THE COURT:** All right. Well, maybe that's -- I don't know
14 whether that's a good idea or not. But okay. The order of
15 business today is -- and we will save all those other issues of
16 what is the right answer for a future day --

17 **MS. HEYE:** Yes, Your Honor.

18 **THE COURT:** -- and we'll just do the plea here today. So
19 who is going to actually speak for the corporation?

20 **MR. HALLING:** Mr. Sang Soo Noh is the person who has been
21 authorized to speak. He's present. He was authorized by the
22 Board.

23 And attached to the plea agreement is the formal
24 authorization from the Samsung SDI Board of Directors
25 authorizing Mr. Noh to sign the plea agreement and to enter a

1 plea.

2 **THE COURT:** Okay. All right. So I'll ask him about that.
3 So he's knowledgeable about all of that?

4 **MR. HALLING:** He is knowledgeable to some extent, that's
5 correct, Your Honor.

6 **THE COURT:** All right. Well, we will see. So let's ask
7 him -- has the interpreter been sworn in this matter?

8 **THE INTERPRETER:** Yes, Your Honor.

9 **THE COURT:** You have already last time?

10 **THE INTERPRETER:** Yes, Your Honor.

11 **THE COURT:** Okay. So let's ask Mr. Noh to please stand in
12 the middle and raise your right hand and take an oath to tell
13 the truth.

14 *(Defendant Representative placed under oath.)*

15 **MR. NOH:** Yes.

16 **THE CLERK:** Please state your full name for the record.

17 **MR. NOH:** Sang Soo Noh.

18 **THE COURT:** All right. Welcome to the Court.

19 How are you today?

20 **MR. NOH:** I'm fine, Your Honor.

21 **THE COURT:** Good.

22 All right. How old are you?

23 **MR. NOH:** I'm 48 years old.

24 **THE COURT:** How far did you go in school?

25 **MR. NOH:** I graduated from the university.

1 **THE COURT:** Okay. And in what country was that?

2 **MR. NOH:** In Korea.

3 **THE COURT:** Okay. And what kind of degree do you have?

4 **MR. NOH:** B.A.

5 **THE COURT:** Okay. And how do you make your living?

6 **MR. NOH:** I'm a vice-president of the financial
7 department.

8 **THE COURT:** Of what?

9 **MR. NOH:** Financial division.

10 **THE COURT:** Of Samsung SDI Company?

11 **MR. NOH:** Yes, Your Honor.

12 **THE COURT:** Okay. And are you thinking clearly today?

13 **MR. NOH:** Yes, Your Honor.

14 **THE COURT:** Are under the influence of any medicine,
15 alcohol or narcotic?

16 **MR. NOH:** No, Your Honor.

17 **THE COURT:** Are you mentally ill or being treated for any
18 mental illness?

19 **MR. NOH:** No, I am not.

20 **THE COURT:** Okay. And are you an officer of Samsung SDI
21 Company, Limited?

22 **MR. NOH:** Yes, I am.

23 **THE COURT:** And again, tell us what officer you are.

24 **MR. NOH:** Vice-president of finance.

25 **THE COURT:** Okay. And is the Board of Directors of

1 Samsung SDI Company, Limited, authorized to authorize you to
2 enter into a plea of guilty to the charge brought against
3 Samsung SDI Company in this case?

4 **MR. NOH:** Yes.

5 **THE COURT:** And has the board of directors, in fact,
6 authorized you to enter such a plea?

7 **MR. NOH:** Yes.

8 **THE COURT:** And have you -- do you, yourself, understand
9 what the charges are in this case against Samsung SDI Company,
10 Limited?

11 **MR. NOH:** Yes, I'm aware of that.

12 **THE COURT:** All right. And has -- have you and others in
13 the company discussed with counsel, meaning the attorneys, all
14 of the ways to defend against this case?

15 **MR. NOH:** Yes.

16 **THE COURT:** And are the officers and directors of Samsung
17 SDI Company, Limited, fully satisfied with the advice of
18 counsel that they have received in this case?

19 **MR. NOH:** Yes.

20 **THE COURT:** Is Samsung SDI Company, Limited, financially
21 able to pay the fine that is agreed upon in your amended plea
22 agreement?

23 **MR. NOH:** Yes.

24 **THE COURT:** All right. I understand that your willingness
25 to plead guilty, meaning Samsung, SDI Company, Limited's,

1 willingness to plead guilty is a result of discussions between
2 your lawyers and the government lawyers that led up to this
3 amended plea agreement. Is that true?

4 **MR. NOH:** Yes.

5 **THE COURT:** All right. And did you -- did they read this
6 agreement to you in Korean?

7 **MR. NOH:** Yes.

8 **THE COURT:** Did you understand it?

9 **MR. NOH:** Yes, I did.

10 **THE COURT:** Did you discuss it with your attorneys?

11 **MR. NOH:** Yes, we did.

12 **THE COURT:** And does this agreement contain all of your
13 complete agreement with the U.S. Government?

14 **MR. NOH:** Yes.

15 **THE COURT:** All right. So let's see, this is a Section 1
16 case. So I guess the elements of the count are not summarized
17 here anywhere, are they? I think I know them.

18 **MS. HEYE:** I'm happy to read them, Your Honor, if you
19 would like.

20 **THE COURT:** Let's just see. Do you have the information
21 with you?

22 **MS. HEYE:** Um-hum.

23 **THE COURT:** Could I see that?

24 **MS. HEYE:** Yes.

25 **THE COURT:** All right. Under this agreement, your --

1 Samsung SDI Company, Limited, would be pleading guilty to a
2 count of violating Section 1 of the Sherman Act. And basically
3 that is it makes illegal conspiring to -- conspiring with some
4 other company to restrain trade in foreign or domestic
5 commerce. And the particular things that are charged in this
6 case basically go to what? Tell me -- tell us what they are in
7 summary form, you, the government, please --

8 **MS. HEYE:** Well, the elements of the Sherman --

9 **THE COURT:** -- Ms. Heye.

10 **MS. HEYE:** Sure. The elements of the Sherman Act Section
11 1 are first that the defendant entered into a conspiracy. The
12 conspiracy was an unreasonable restraint of trade. And the
13 conspiracy affected interstate commerce in the United States.

14 **THE COURT:** All right. And what, was it price fixing?

15 **MS. HEYE:** It was price -- I am prepared to read a factual
16 basis, Your Honor, if that would be helpful.

17 **THE COURT:** Well, how long is that?

18 **MS. HEYE:** One page.

19 **THE COURT:** Okay. Why don't you go ahead and do that, and
20 then I'll -- is that the same one that's in the agreement?

21 **MS. HEYE:** Yes, Your Honor.

22 **THE COURT:** Okay. I'm going to come to that.

23 **MS. HEYE:** Okay.

24 **THE COURT:** So you don't have to do that.

25 **MS. HEYE:** Okay. But it is price-fixing, reduction of

1 output, and market share allegations.

2 **THE COURT:** Okay. So those are the things that the
3 government is accusing Samsung of agreeing with some other
4 company to restrain trade, and that affects the commerce in the
5 United States. That's the basic claim, and that breaks down
6 into price-fixing and restricting output. What was the third
7 thing?

8 **MS. HEYE:** Market share allegations.

9 **THE COURT:** Market share allegations, all of which are per
10 se violations under Section 1.

11 Do you understand that?

12 **MR. NOH:** Yes.

13 **THE COURT:** Okay. Now -- so if you were to plead guilty
14 to that -- and we will come to that in a minute -- under the
15 statute, the individual people go to prison when they do this.
16 But in this case, we don't have individual people. It's a
17 company, and you can't put a company in prison. So they just
18 get to pay a fine.

19 And the statute authorizes a fine up to \$100 million, plus
20 there is a special assessment of \$100, right?

21 **MS. HEYE:** It's actually \$400, Your Honor.

22 **THE COURT:** \$400. So \$400 is mandatory. And then there
23 is a fine of anywhere from zero to \$100 million.

24 Do you understand that part?

25 **MR. NOH:** Yes.

1 **THE COURT:** All right. In addition, even though the
2 government has said they won't seek it, the Court could require
3 restitution. I'll come to the affect of your agreement on that
4 in a minute.

5 But under the statute, restitution is a possibility. Do
6 you understand that part?

7 **MR. NOH:** Yes.

8 **THE COURT:** All right. And then is there supervised
9 release under the statute?

10 **MS. HEYE:** A term of probation is also part of the
11 maximum -- potential maximum penalty.

12 **THE COURT:** And that would be -- what does the statute
13 authorize?

14 **MS. HEYE:** It is at least one year but no more than five
15 years.

16 **THE COURT:** Okay. So also the judge could impose -- must
17 impose, it sounds like, one year, right?

18 **MS. HEYE:** Under a maximum penalty.

19 **THE COURT:** And then up to five years of probation in
20 addition to the fine.

21 Do you understand?

22 **MR. NOH:** Yes.

23 **THE COURT:** Good. All right. So this is also a felony
24 that Samsung will be pleading guilty to.

25 Do you understand that part?

1 **MR. NOH:** Yes.

2 **THE COURT:** So I guess it's fair to say -- and tell me if
3 I'm wrong -- but this plea could be entered in the -- with
4 collateral consequences in the civil litigation, right?
5 Couldn't they just put this in evidence as the evidence
6 directly against Samsung?

7 **MR. HALLING:** There is a provision, Your Honor, of the
8 Clayton Act that addresses the affect of a conviction. And so
9 the answer -- the short answer is yes, it's pursuant to the
10 terms of a particular statute. It's part of the Clayton Act.

11 **THE COURT:** Okay. So do you understand that at least
12 there is a risk that, by pleading guilty, Samsung will be
13 prejudicing itself in the civil litigation by making it easier
14 to prove that Samsung engaged in a conspiracy.

15 Do you understand?

16 **MR. NOH:** Yes.

17 **THE COURT:** Okay. All right. And then let me go through
18 what the procedure we would follow would be. After you plead
19 guilty, assuming you do, then I would refer Samsung to the
20 probation department, and a presentence report would be
21 prepared. That's going to take us about 90 days. Then we come
22 back here in about 90 days and have a sentencing hearing.

23 And at the sentencing hearing, the purpose is to decide on
24 the lowest, in this case, fine, that would carry out the
25 sentencing objectives of Congress such as the need for

1 deterrence, the need to reflect the seriousness of the offense
2 and so forth.

3 You would have the right to be heard. The lawyers would
4 have the right to be heard. And then the judge would have to
5 make a decision on what is the right answer. And the
6 presentence report is a very important document in that
7 process, so you would participate in its preparation. You
8 would have the right to comment on its accuracy and to make
9 objections to it if you thought it was inaccurate. We would
10 then have that hearing.

11 I don't know the answer. It could be that I think
12 \$32 million is too much. It could be that I think \$32 million
13 is too little. It could be that I think \$32 million is close
14 enough and let's just go with that. I don't know. That's why
15 we have the hearing.

16 But here is the good part for you: If I or the judge
17 decides that it should be more than \$32 million, then fine,
18 then Samsung has the option to either take the higher amount.
19 I don't know what it could be, but whatever it is, take the
20 higher fine and just pay it, or say, "No, that's not right, we
21 don't like that deal," and withdraw your guilty plea, which you
22 would have the right to do under this agreement, and take your
23 chances at trial.

24 That would be your right, to do either one of those two.
25 So you could either take the higher amount and pay that or ask

1 to withdraw your guilty plea. That would, of course, be
2 granted. Then you would go to trial and you would take your
3 chances at trial.

4 Do you understand?

5 **MR. NOH:** Yes.

6 **THE COURT:** Okay. Good.

7 All right. Now, again, I want to emphasize, I don't have
8 any idea what the right answer here is. And we just have to
9 wait and see, go through the process and find out.

10 But you do have an important measure of protection, given
11 that this is a plea agreement that your lawyers have gotten you
12 this additional advantage of being able to withdraw the plea of
13 guilty if it turns out that you don't like -- if the sentence
14 is higher than \$32 million.

15 On the other hand, if I were to sentence Samsung to pay
16 the \$32 million, you would be stuck with that, meaning Samsung
17 would be stuck with its guilty plea and could not get out of
18 that.

19 Do you understand that?

20 **MR. NOH:** Yes. Yes, I do.

21 **THE COURT:** All right. I want to change the subject for a
22 minute and explain the rights to go to trial.

23 Has Samsung fully discussed with counsel its right to go
24 to trial and its right to make the government prove the case
25 against it?

1 **MR. NOH:** Yes, they did.

2 **THE COURT:** Let's go over what those rights are. Under
3 our system, no matter how guilty Samsung is, you have the
4 perfect right to say to the government, "Okay, prove it," and
5 make the government prove the case against you.

6 And sometimes even though somebody is guilty, the
7 government just doesn't have the proof to prove it.

8 So that is a very important right, and you would be giving
9 that right up.

10 Under our system, the burden of proof is always on -- the
11 burden of proof is always on the government. It's never, never
12 on the defendant, and the government has to call witnesses.

13 Samsung has a right to be here with its representatives,
14 to see and hear all of the testimony offered against it, and
15 work with the lawyers for the best possible cross-examination
16 of all of those witnesses.

17 The government, after it rests its case, Samsung would
18 have a right to put on a defense. There is no corporation
19 fifth Amendment, is there? I don't think so.

20 **MS. HEYE:** I don't believe so.

21 **THE COURT:** All right. So Samsung would have a right to
22 put on a defense, call witnesses on its behalf, and we would
23 subpoena those witnesses as necessary to make them show up and
24 testify.

25 We would obligate them to tell the truth by putting them

1 under oath.

2 Now, when all of the evidence was before the jury, the
3 jury would have to decide whether the government has carried
4 its burden of proof. That means all 12 people on the jury
5 would have to agree that the government had proven beyond a
6 reasonable doubt each and every element of the offense. That's
7 Section 1 of the Sherman Act.

8 And if the jury said yes, the government had done that,
9 then the jury would be obligated to return a guilty verdict.
10 On the other hand, if even one member of the 12-person jury
11 thought that the government had fallen short on even one
12 element of its proof, that jury would not be allowed to convict
13 Samsung.

14 Do you understand that?

15 **MR. NOH:** Yes. Yes, I understand.

16 **THE COURT:** Very well. Then after -- if Samsung was
17 convicted, in addition, Samsung would have the right to appeal
18 both the verdict, as well as the amount of any fine or terms of
19 probation that were placed upon it.

20 Do you understand? Or restitution for that matter.

21 Do you understand?

22 **MR. NOH:** Yes, I'm aware of that.

23 **THE COURT:** All right. Now, here's the deal: If you
24 plead guilty today, if Samsung pleads guilty today, then
25 Samsung will be giving up all of those rights.

1 Do you understand that?

2 **MR. NOH:** Yes, I understand.

3 **THE COURT:** All right. And does Samsung want to do that
4 freely and voluntarily?

5 **MR. NOH:** Yes.

6 **THE COURT:** Is anyone putting pressure on Samsung to plead
7 guilty?

8 **MR. NOH:** No.

9 **THE COURT:** All right. So let's see what it is that
10 Samsung did wrong. I'm going to read from your agreement here,
11 and then I'll paraphrase. I won't get it exactly right. But
12 I'm taking it out of this agreement, so you tell me if it's
13 right.

14 From as early as January of '97 until as late as March of
15 '06, Samsung SDI Company, Limited, was a corporation organized
16 and existing under the laws of Korea with its principal place
17 of business in Kiheung, Republic of Korea. True?

18 **MR. NOH:** That is correct, Your Honor.

19 **THE COURT:** During that relative -- during that period,
20 Samsung SDI Company, Limited, was a producer of CDTs.
21 Cathode -- what does that stand for?

22 **MS. HEYE:** Color display tubes, Your Honor.

23 **THE COURT:** Color display tubes. All right. It was a
24 producer of color display tubes; was engaged in the sale of
25 color display tubes in the USA and elsewhere; and employed over

1 5,000 individuals. All true?

2 **MR. NOH:** Yes, Your Honor.

3 **THE COURT:** CDTs, meaning color display tubes, are a type
4 of cathode ray tube. True?

5 **MR. NOH:** Yes. Yes, true.

6 **THE COURT:** Cathode ray tubes consist of evacuated glass
7 envelopes that contain an electron gun and a phosphorescent
8 screen. True?

9 **MR. NOH:** Yes.

10 **THE COURT:** When electrons strike the screen, light is
11 emitted, creating an image on the screen. True?

12 **MR. NOH:** Yes.

13 **THE COURT:** CDTs are the specialized cathode ray tubes
14 manufactured for use in computer monitors and other products
15 with similar technological requirements.

16 CDTs are distinguished from another type of specialized
17 cathode ray tubes, while color picture tubes, CPTs, which are
18 manufactured for use in televisions. True?

19 **MR. NOH:** Yes.

20 **THE COURT:** During this period, which, again, is '97 to
21 '06, Samsung SDI Company, Limited, through its officers and
22 employees, including high-level personnel, participated in a
23 conspiracy among major CDT producers, the primary purpose of
24 which was to fix prices, reduce output and allocate market
25 shares of CDTs sold in the USA and elsewhere. True?

1 **MR. NOH:** Yes.

2 **THE COURT:** In furtherance of the conspiracy, the
3 defendant, through its officers and employees, engaged in
4 discussions and attended meetings with representatives of other
5 major CDT producers.

6 During these discussions and meetings, agreements were
7 reached to fix prices, reduce output, and allocate market
8 shares of CDTs to be sold in the USA and elsewhere. True?

9 **MR. NOH:** Yeah.

10 **THE COURT:** During the relevant period, meaning '97 to
11 '06, CDTs sold by one or more of the conspirator firms and
12 equipment and supplies necessary to the production and
13 distribution of CDTs, as well as payment for CDTs, traveled in
14 interstate and foreign commerce. True?

15 **MR. NOH:** Yes.

16 **THE COURT:** The business activities of the defendant,
17 meaning Samsung SDI Company, Limited, and its co-conspirators,
18 in connection with the production and sale of CDTs that were
19 subjects of this conspiracy, were within the flow-up and
20 substantially affected interstate and foreign trade-in
21 commerce. True?

22 **MR. NOH:** Yes.

23 **THE COURT:** During the relevant period, the defendant CDT
24 sales directly affected by the conspiracy to customers in the
25 USA totaled approximately \$89 million. True?

1 **MR. NOH:** Yes, true.

2 **THE COURT:** Finally, acts in furtherance of this
3 conspiracy were carried out within the Northern District of
4 California. CDTs that were the subject of this conspiracy were
5 transported by one or more of the co-conspirators through this
6 district. True?

7 **MR. NOH:** Yes.

8 **THE COURT:** All right. I just want to go back to one
9 other thing. It looks like in your agreement that the maximum
10 fine is the greatest of \$100 million or twice the gross
11 pecuniary gain the conspirators derived from the crime or twice
12 the gross pecuniary loss caused to the victims of the crime by
13 the conspirators.

14 Have I said that right?

15 **MS. HEYE:** Yes, Your Honor.

16 **THE COURT:** Do you understand that part?

17 **MR. NOH:** Yes.

18 **THE COURT:** Okay. So I ask Ms. Heye -- I'm sorry if I --
19 am I saying it right?

20 **MS. HEYE:** You're getting it, um-hum.

21 **THE COURT:** -- Ms. Heye if I need to ask anything more or
22 anything more that should be put on the record?

23 **MS. HEYE:** That's sufficient, Your Honor.

24 I would like to go through what the defendant's
25 cooperation obligations were in response to your earlier

1 question about the material terms.

2 **THE COURT:** Oh, yes, the cooperation.

3 Yes, please do that, Ms. Heye.

4 **MS. HEYE:** Sure. The defendant agrees to provide full
5 cooperation with the government's ongoing criminal
6 investigation into anticompetitive activity in the CDT and CPT
7 industry, including providing documents we request from both
8 overseas and the United States.

9 This cooperation also includes using Samsung SDI's best
10 efforts to secure the ongoing, full and truthful corporation of
11 all current and former officers, employees and directors of the
12 company, except the individuals who have been carved out of
13 both the obligations and protections of the plea agreement.

14 **THE COURT:** All right. So do you understand that part?

15 **MR. NOH:** Yes. Yes, I do.

16 **THE COURT:** All right. And if there is a violation of
17 that, what does the government get to do?

18 **MS. HEYE:** Your Honor, then the government may seek to
19 void the plea agreement.

20 **THE COURT:** Void the plea or void the -- in other words,
21 what happens to the guilty plea if you seek to do that?

22 **MS. HEYE:** If they violate the plea agreement, then they
23 shall be subject to prosecution for any federal crime,
24 including the substantive offenses relating to the
25 investigation resulting in this plea agreement.

1 **THE COURT:** Is that right?

2 **MR. HALLING:** Your Honor, if the terms are violated, the
3 agreement can be voided and the government can prosecute,
4 correct?

5 **THE COURT:** But does the guilty plea go away at that
6 point?

7 **MR. HALLING:** I believe so.

8 **THE COURT:** Where does it say that?

9 **MS. HEYE:** Well, because of the -- because the plea
10 agreement -- because we're voiding our obligation under this
11 plea agreement, I think that then the company would not be held
12 to the plea agreement anymore.

13 **MR. HALLING:** It would be as though the plea agreement
14 never occurred.

15 **THE COURT:** All right. Paragraph 20 covers this?

16 **MS. HEYE:** Um-hum.

17 **THE COURT:** Let me just look at it.

18 Okay. Anything more that needs to be said on that
19 subject?

20 **MS. HEYE:** No, Your Honor.

21 **THE COURT:** All right. Is there anything the defense
22 counsel wish for me to go over?

23 **MR. HALLING:** No, Your Honor.

24 **THE COURT:** So, Mr. Sang Soo Noh, any questions you have?

25 **MR. NOH:** No, I do not, Your Honor.

1 **THE COURT:** Okay. All right. And do you wish to go
2 forward now, or do you want more time to think about it?

3 **MR. NOH:** I would like to go ahead now, Your Honor.

4 **THE COURT:** All right. So I will now ask you the official
5 question, and that is: How does Samsung SDI Company, Limited,
6 a defendant in this case, plead to the information filed
7 against it in this case charging it with criminal violation of
8 Section 1 of the Sherman Act, conspiracy and restraint of
9 trade?

10 Does Samsung SDI Company, Limited, plead guilty or not
11 guilty?

12 **MR. NOH:** Guilty.

13 **THE COURT:** All right. So, Mr. Sang Soo Noh, I'm going to
14 do what you have asked me to do. I will find that you and
15 Samsung are fully competent and capable of entering an informed
16 plea; that you are aware, and Samsung is aware of the nature of
17 the charges and the possible consequences of pleading guilty;
18 that Samsung's plea of guilty is supported by a factual basis;
19 that it is voluntary and informed.

20 So the Court will accept your plea of guilty on behalf of
21 Samsung SDI Company, Limited, and adjudge Samsung SDI Company,
22 Limited, convicted of violating Section 1 as charged in the
23 Sherman Act. So that important step is behind Samsung SDI
24 Company, Limited.

25 Now the Court will refer you to the probation department

1 for preparation of the presentence report, and then we will
2 come back here later on to determine what the sentence ought to
3 be or whether to accept your proposed agreement.

4 Now, ordinarily we'd come back in 90 days, but you may
5 want time for your cooperation to run.

6 I'll do whatever you want to do that on that.

7 **MS. HEYE:** I think we'd like to come back in 90 days, Your
8 Honor.

9 **MR. HALLING:** We would like to come back in 90 days, Your
10 Honor.

11 **THE COURT:** In 90 days. Fine. Set it for 90 days out.

12 **THE CLERK:** August 16th at 2:00.

13 **THE COURT:** All right.

14 **MS. HEYE:** Would you like the original plea?

15 **THE COURT:** Yes. Please give Tony the original plea, and
16 you keep that, Tony. I don't need to see that. Just make
17 sure -- let me just see if it's been properly signed.

18 Has it been signed by everyone?

19 **MS. HEYE:** Yes, Your Honor, it has.

20 **THE COURT:** All right. Here you are.

21 All right. Anything more I can do for you today?

22 **MS. HEYE:** Just in an abundance of caution, can we confirm
23 and put on the record that time between now and the sentencing
24 hearing shall be excluded from the Speedy Trial Act on the
25 basis that -- for a delay resulting from consideration by the

1 Court of our proposed plea agreement.

2 **THE COURT:** Okay. Well, I'll do that if everyone wants me
3 to, but I think since the guilty plea has been accepted, the --
4 whether or not -- you see, the plea has been accepted.

5 **MS. HEYE:** Um-hum.

6 **THE COURT:** If I were to exceed the \$32 million here, for
7 some reason, then you would have a right to make a motion to
8 withdraw the guilty plea.

9 I don't think what you're asking for is necessary, but out
10 of caution, we will do that.

11 Is there any objection?

12 **MR. HALLING:** No, Your Honor.

13 **THE COURT:** All right. For the reasons stated by counsel,
14 the time between today and August 16th will be excluded from
15 the speedy trial calculation.

16 The Court finds the need for the continuance outweighs the
17 need for the public and the defendant in a speedy trial.

18 Please do a written stipulation.

19 Would you do that?

20 **MS. HEYE:** Yes, Your Honor.

21 **THE COURT:** Okay. Anything more today?

22 **MS. HEYE:** No, Your Honor, that's it.

23 **MR. HALLING:** No, Your Honor.

24 **THE COURT:** Great. Thank you all.

25 **MR. HALLING:** Thank you, Your Honor.

1 **THE COURT:** Have a good day.

2 **THE CLERK:** Court is in recess.

3 *(Proceedings concluded at 4:00 p.m.)*

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CERTIFICATE OF REPORTER

I, the undersigned, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceedings and caption named, or in any way interested in the outcome of the cause named in said caption.

The fee charged and the page format for the transcript conform to the regulations of the judicial conference.

Furthermore, I certify the invoice does not contain charges for the court reporter's certification page.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May 2011.

/s/ Margaret Gurule

MARGARET "MARGO" GURULE, CSR